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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,431

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Richard Martin Jacobson

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EXAMINER

QAZI, SABIHA NAIM

ART UNIT

PAPER NUMBER

1612

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p style="text-align: center;"><b>Advisory Action</b> <b>After the Filing of an Appeal Brief</b></p>	Application No.	Applicant(s)	
	10/645,431	JACOBSON ET AL.	
	Examiner	Art Unit	
	Sabiha Qazi	1612	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

The reply filed 19 May 2010 is acknowledged.

1. ☐ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☐ The affidavit or other evidence is not timely filed before the filing of an appeal brief. See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: Anticipation rejection is withdrawn. All other rejections are maintained for the same reasons as set forth in the final action. Double patenting rejections over KOSTANSEK and LAMOLA are with drawn because TD are file and approved.

When a valid case of prima facie obviousness has been established, the burden shifts to applicant to demonstrate that a claimed functional property is applicable to the claim in its broad scope: In re Greenfield, 197 USPQ 227, 229 (CCPA 1978). (Holding that despite the fact that the rejection was one of obviousness and not anticipation, the burden was nevertheless on applicant to provide factual verification of the alleged functional property). Applicant is again informed that the database search on STN picked more than 800 references as a result of the search on claim 1. The STN search displayed 275 hits in CAPLUS. Claims are very broad and it not possible to search completely the claimed subject matter as in claim 1. Applicant may consider limiting the claims to reasonable genus.

/Sabiha Qazi/  
Primary Examiner, Art Unit 1612